

E-filed 5/18/09

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SYNAPSIS, LLC,

Plaintiff,

v.

EVERGREEN DATA SYSTEMS, INC., et al.

Defendants.

Case Number C 05-1524 JF

ORDER¹ DISSOLVING
TEMPORARY RESTRAINING
ORDER

re: docket no. 317

On May 7, 2009 at 5:38 PM, Defendants Evergreen Data Systems, Inc., Bruce R. McAllister, and Steven J. Demartini (“Defendants”) filed an emergency application for an assignment of assets pursuant to California Code of Civil Procedure § 708.510 in order to ensure collection of a judgment that they obtained in this Court in December 2007. Defendants have attempted repeatedly but unsuccessfully to collect the judgment from Plaintiff Synapsis, LLC (“Plaintiff”). They believed that Plaintiff was about to receive a substantial sum of money from Lawyers Mutual Insurance Company (“Lawyers’ Mutual”) as part of a settlement of Plaintiff’s

¹ This disposition is not designated for publication and may not be cited.

1 legal malpractice action against its former counsel in the instant action. Defendants moved in the
2 alternative for an order temporarily restraining Lawyers Mutual Insurance Company from making
3 any payment to Plaintiff without further notification from this Court. On May 8, 2009 at 1:20
4 PM, this Court filed an order granting Defendants' application for a temporary restraining order.
5 It appears that the order was served on Lawyers' Mutual at approximately 5 PM.

6 Lawyers' Mutual since has informed the Court that a check for the legal malpractice
7 settlement was issued to Plaintiff on May 4, 2009, that the check was sent to Plaintiff by
8 overnight courier on May 7, 2009, and that Plaintiff cashed the check on May 8, 2009 at
9 approximately 1:02 PM. In light of these facts, the temporary restraining order is moot and will
10 be dissolved. The hearing set for May 22, 2009 is hereby vacated. Defendants may file a noticed
11 motion for any other relief that may be appropriate.

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13 **IT IS SO ORDERED**

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15 DATED: 5/18/09

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19 JEREMY FOCHEL
20 United States District Judge
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1 This Order was served on the following persons:

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3 **Plaintiff's counsel:**

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5 Jeffrey F. Sax jsax@saxlaw.net

6
7 William Karl Mills mills@pmmlaw.com

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9 **Defendant's counsel:**

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11 Daniel C. DeCarlo decarlo@lbbslaw.com